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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE NEWARK GROUP, INC.

Defendant.

CIVIL ACTION NO.

JUDGE

COMPLAINT

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States and at the request of and on behalf of the United States Environmental Protection Agency ("EPA"), alleges the following:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107 of the

1 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended,  
2 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, relating to releases or threatened releases of  
3 hazardous substances at the Lorentz Barrel and Drum Superfund Site in San Jose, Santa Clara  
4 County, California (the "Facility" or "Site"). The United States seeks: (a) performance of  
5 certain response actions by Defendant at the Site, consistent with the national contingency plan,  
6 40 C.F.R. Part 300 (as amended); (b) reimbursement of certain costs incurred by EPA and the  
7 Department of Justice ("DOJ")(hereinafter collectively referred to as the "United States"),  
8 including accrued interest, for response actions at the Site, pursuant to CERCLA; and (c) a  
9 declaratory judgment that Defendant is liable for future response costs incurred by the United  
10 States in connection with the Site.

#### 11 JURISDICTION AND VENUE

12 2. This Court has jurisdiction over the subject matter of this action pursuant to  
13 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

14 3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and  
15 28 U.S.C. § 1391(b), because the claims arose and the threatened and actual releases of  
16 hazardous substances occurred in this district.

#### 17 DEFENDANT

18 4. Defendant is a New Jersey corporation.

19 5. Defendant is a "person," as defined by Section 101(21) of CERCLA,  
20 42 U.S.C. § 9601(21).

21 6. Defendant is the owner and operator of a facility from which there was a release,  
22 or a threatened release, of a hazardous substance which caused the incurrence of response costs.

#### 23 GENERAL ALLEGATIONS

24 7. The Lorentz Barrel and Drum Superfund Site consists of approximately 6.72 acres  
25 located in San Jose, Santa Clara County, California.

26 8. From approximately 1947 until 1987, the Lorentz Barrel and Drum Company  
27 ("Lorentz") engaged in a barrel and drum reconditioning and reclamation operation at the Site.

28 9. As part of the operations referred to in the preceding paragraph, drums containing

1 varying amounts of residual materials, including materials that contained hazardous substances as  
2 defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were regularly received at the Site  
3 from over 3,000 private and public parties. Lorentz stored and reconditioned drums that  
4 contained residual aqueous wastes, organic solvents, acids, oxidizers and oils. During storage at  
5 the Site, the residual contents of the drums leaked or spilled onto the ground. Lorentz used a  
6 variety of methods to recondition the drums, including caustic and acid washing, incineration,  
7 blasting with steel shot and steam cleaning. The residues and cleaning materials were allowed to  
8 drain to the storm sewers or routinely dumped into sumps and basins on-site. The drums were  
9 then resealed, repainted and were either returned to the original owner or sold.

10 10. During the drum storage and reconditioning operation referred to in the preceding  
11 paragraph, large quantities of hazardous substances, as defined by Section 101(14) of CERCLA,  
12 42 U.S.C. § 9601(14), were allowed to commingle in the environment, including in the soil and  
13 groundwater. There were "releases," as defined by Section 101(22) of CERCLA, 42 U.S.C.  
14 § 9601(22), of hazardous substances at and from the Site.

15 11. In late 1987 and 1988, EPA and the California Department of Toxic Substances  
16 Control ("DTSC") conducted emergency response actions at the Site. During the emergency  
17 response actions, EPA sampled and removed abandoned drums, and drained and disposed of  
18 hazardous liquids from on-site storage tanks. In 1988, EPA and DTSC removed approximately  
19 3,000 cubic yards of soil and sludge from the sump and basin areas of the Site that were highly  
20 contaminated with volatile and semi-volatile organic compounds, pesticides, herbicides,  
21 polychlorinated biphenyls, and other hazardous substances.

22 12. Samples collected during the emergency response actions indicated that hazardous  
23 substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were  
24 present in the soil and groundwater at the Site.

25 13. On October 4, 1989, the Facility was placed on the National Priorities List, 54 Fed.  
26 Reg. 41000, 41015, which is a national list of hazardous waste sites posing the greatest threat to  
27 human health and welfare and the environment. The National Priorities List is established  
28 pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

1           14.    The Site is a "facility" within the meaning of Section 101(9) of CERCLA,  
2 42 U.S.C. § 9601(9).

3           15.    There has been a "release" and/or threatened "release" of a hazardous substance at  
4 or from the Site, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

5           16.    The United States has incurred costs at the Site that have not been reimbursed  
6 through prior settlements. In addition, the United States expects to incur future costs at the Site.

7                                   CLAIM FOR RELIEF:  
8                                   PERFORMANCE OF RESPONSE ACTIONS

9           17.    The allegations contained in paragraphs 1-16 are realleged and incorporated by  
10 reference herein.

11           18.    Section 106 (a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

12                                   [W]hen the President determines that there may be an imminent and  
13                                   substantial endangerment to the public health or welfare or the  
14                                   environment because of an actual or threatened release of a  
15                                   hazardous substance from a facility, he may require the Attorney  
16                                   General of the United States to secure such relief as may be  
17                                   necessary to abate such danger or threat . . . .

18           19.    The President or his delegate, the Regional Administrator, has determined that the  
19 release and/or threatened release at or from the Site poses an imminent and substantial  
20 endangerment to the public health, welfare, or the environment, and that response actions are  
21 necessary to abate the danger or threat posed by the actual or threatened release of hazardous  
22 substances at or from the Site.

23           20.    Defendant is liable to perform response actions at the Site to abate this danger or  
24 threat, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

25                                   SECOND CLAIM FOR RELIEF:  
26                                   RESPONSE COSTS

27           21.    The allegations contained in paragraphs 1-14, 17 and 18 are realleged and  
28 incorporated by reference herein.

29           22.    Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

30           23.    Notwithstanding any other provision or rule of law, and subject  
31 only to the defenses set forth in subsection (b) of this section-

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(1) the owner and operator of a . . . facility, . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . .

24. As a result of releases or threatened releases of hazardous substances at the Site, the United States has taken numerous "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

25. The United States has incurred costs in connection with response actions referred to in the preceding paragraph for which it has made a demand upon the Defendant. The United States has outstanding past response costs of more than \$9 million in connection with the Site and continues to incur costs in connection with the Site.

26. The costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 et seq.

27. Defendant is liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs, and for prejudgment interest on such costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

28. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in pertinent part that, in any action for recovery of costs: "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Enter an order against Defendant requiring that it perform response actions

1 necessary to abate the danger of a release or threat of a release of hazardous substances at  
2 or from the Site, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;

3 2. Enter judgment in favor of the United States and against Defendant for all  
4 costs, including prejudgment interest, incurred by the United States for response actions  
5 in connection with the Site and not otherwise reimbursed;

6 3. Enter a declaratory judgment on Defendant's liability for response costs or  
7 damages that will be binding on any subsequent action or actions to recover further  
8 response costs or damages;

9 4. Award the United States its costs of this action; and

10 5. Grant such other and further relief as this Court deems to be just and  
11 proper.

12 Respectfully submitted,

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